

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1491

Introduced by Assembly Member V. Manuel Perez

February 27, 2009

An act to amend Section 318 of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1491, as amended, V. Manuel Perez. Corporations: boards of directors: diversity.

Under existing law, the Secretary of State, *or the University of California campus or the California State University campus to which the Secretary of State delegates the authority*, maintains a registry of distinguished women and minorities who are available to serve on corporate boards of directors ~~and. Existing law authorizes the Secretary of State to make~~ this information *to be made* available to a person or entity that provides ~~data base~~ *database* access or search services, as specified.

This bill would ~~authorize the Secretary of State to make~~ that information *to be made* available to a person or entity that provides those services only if the registrant agrees. *The bill would also acknowledge that the Secretary of State transferred the authority and duty to maintain the registry to California State University, Fullerton, in January 1999.*

Existing law requires the Secretary of State, in consultation with the Senate Commission on Corporate Governance, Shareholder Rights, and Securities Transactions, *to fix fees for registering with the registry, to*

report, at least once every 3 years, to the Legislature on the registry's effectiveness *and to take other actions*.

This bill would instead require the Secretary of State to consult with the relevant Senate and Assembly committees in ~~preparing those reports taking those actions~~. ~~The bill would also require the Secretary of State, on or before June 1, 2010, to request recommendations from public pension funds on how to improve the registry's effectiveness.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 318 of the Corporations Code is amended
2 to read:
3 318. (a) The Secretary of State shall develop and maintain a
4 registry of distinguished women and minorities who are available
5 to serve on corporate boards of directors. As used in this section,
6 "minority" means an ethnic person of color including American
7 Indians, Asians (including, but not limited to, Chinese, Japanese,
8 Koreans, Pacific Islanders, Samoans, and Southeast Asians),
9 Blacks, Filipinos, and Hispanics.
10 (b) For each woman or minority who participates in the registry,
11 the Secretary of State shall maintain information on his or her
12 educational, professional, community service, and corporate
13 governance background. That information may include, but is not
14 limited to:
15 (1) Paid or volunteer employment.
16 (2) Service in elected public office or on public boards or
17 commissions.
18 (3) Directorships, officerships, and trusteeships of business and
19 nonprofit entities, including committee experience.
20 (4) Professional, academic, or community awards or honors.
21 (5) Publications.
22 (6) Government relations experience.
23 (7) Experience with corporate constituents.
24 (8) Any other areas of special expertise.
25 (c) In addition to the information subdivision (b) requires, each
26 woman or minority who participates in the registry may disclose
27 any number of personal attributes that may contribute to board

1 diversity. Those attributes may include, but are not limited to,
2 gender, physical disability, race, or ethnic origin.

3 (d) In addition to the information subdivision (b) requires, each
4 woman or minority who participates in the registry may indicate
5 characteristics of corporations for which he or she would consider,
6 or is especially interested in, serving as a director. These
7 characteristics may include, but are not limited to, company size,
8 industry, geographic location, board meeting frequency, director
9 time commitments, director compensation, director insurance or
10 indemnification, or social policy concerns.

11 (e) Any woman or minority may nominate himself or herself
12 to the registry by filing with the Secretary of State the information
13 required by subdivision (b) on a form the secretary prescribes. Any
14 registrant may attach a copy of his or her resume and up to two
15 letters of recommendation to his or her registration form. Each
16 registrant's registration form, together with any attached resume
17 or letters of recommendation, shall constitute his or her registry
18 transcript.

19 (f) The Secretary of State shall make appropriate rules requiring
20 registrants to renew or update their filings with the registry, as
21 necessary to ensure continued accuracy of registry information.

22 (g) The Secretary of State shall assign each registrant a file
23 number, then enter the information described in subdivisions (b),
24 (c), and (d) into a data base, using the registrant's file number to
25 identify him or her. The registry data base shall not disclose any
26 registrant's name or street address, but may list the city, county,
27 or ZIP Code of his or her business or residence address. The
28 secretary shall make data base information available to those
29 persons described in subdivisions (i) and (j). The secretary may
30 provide that access either by permitting direct data base searches
31 or by performing data base searches on written request.

32 (h) The Secretary of State may, to the extent the registrant has
33 agreed, also make information contained in the registry data base
34 available to any person or entity qualified to transact business in
35 California that regularly engages in the business of providing data
36 base access or search services; provided, that data base access will
37 not be construed to entitle the user to access to any registrant's
38 transcript.

39 (i) The Secretary of State shall make information contained in
40 a reasonable number of registrants' transcripts available to any

1 corporation or its representative. A “representative”, for purposes
2 of this subdivision, may be an attorney, an accountant, or a retained
3 executive recruiter. A “retained executive recruiter”, for purposes
4 of this subdivision, is an individual or business entity engaged in
5 the executive search business that is regularly retained to locate
6 qualified candidates for appointment or election as corporate
7 directors or executive officers.

8 (j) The Secretary of State may also grant access to a reasonable
9 number of registrants’ transcripts to any other person who
10 demonstrates to the secretary’s satisfaction that the person does
11 both of the following:

12 (1) Seeks access to the registry in connection with an actual
13 search for a corporate director.

14 (2) Intends to use any information obtained from the registry
15 only for the purpose of finding qualified candidates for an open
16 position on a corporate board of directors.

17 (k) The Secretary of State may employ reasonable means to
18 verify that any party seeking access to registry transcript
19 information is one of those specified in subdivision (i) or (j). To
20 that end, the secretary may require a representative to identify its
21 principal, but may not disclose that principal’s identity to any other
22 person.

23 (l) Upon written request specifying the registrant’s file number,
24 the Secretary of State shall provide any party entitled to access to
25 registry transcripts with a copy of any registrant’s transcript. The
26 secretary may by rule or regulation specify other reasonable means
27 by which persons entitled thereto may order copies of registrants’
28 transcripts.

29 (m) Notwithstanding any other provision of law, no person shall
30 be entitled to access to information the registry contains, except
31 as this section specifically provides.

32 (n) The Secretary of State shall charge fees for registering with
33 the registry, obtaining access to the registry data base, and
34 obtaining copies of registrants’ transcripts. The Secretary of State,
35 in consultation with the ~~Senate Commission on Corporate~~
36 ~~Governance, Shareholder Rights, and Securities Transactions,~~ shall
37 *relevant Senate and Assembly committees,* shall fix those fees by
38 regulation. Fees shall be fixed so that the aggregate amount of all
39 fees collected shall be sufficient to cover the total cost of
40 administering the registry program. Registration fees shall be fixed

1 so as to encourage qualified women and minorities to participate.
2 Fees shall be deposited into the Secretary of State's Business Fee
3 Fund.

4 (o) The Secretary of State may make any rule, regulation,
5 guideline, or agreement the secretary deems necessary to carry out
6 the purposes and provisions of this section.

7 (p) The Secretary of State may cooperate with the California
8 Commission on the Status of Women, the California Council to
9 Promote Business Ownership by Women, the ~~Senate Commission~~
10 ~~on Corporate Governance, Shareholder Rights, and Securities~~
11 ~~Transactions~~ *relevant Senate and Assembly committees*, women's
12 organizations, minority organizations, business and professional
13 organizations, and any other individual or entity the secretary
14 deems appropriate, for any of the following purposes:

15 (1) Promoting corporate use of the registry.

16 (2) Locating qualified women and minorities and encouraging
17 them to participate in the registry.

18 (3) Educating interested parties on the purpose and most
19 effective use of the registry.

20 The secretary may also prepare and distribute publications
21 designed to promote informed use of the registry.

22 (q) The Secretary of State may seek registrants' consent to be
23 listed in a published directory of women and minorities eligible
24 to serve as corporate directors, which will contain a summary of
25 each listed registrant's qualifications. The secretary may
26 periodically publish, or cause to be published, such a directory.
27 Only those registrants who so consent in writing may be included
28 in the directory. The printed directory shall be provided to any
29 person upon payment of a fee, which the Secretary of State will
30 determine by regulation, in consultation with the *relevant* Senate
31 ~~Commission on Corporate Governance, Shareholder Rights, and~~
32 ~~Securities Transactions~~ *and Assembly committees*.

33 (r) The Secretary of State shall implement this section no later
34 than January 1, 1995.

35 (s) At least once in each three-year period during which the
36 registry is available for corporate use, the Secretary of State, in
37 consultation with the relevant Senate and Assembly committees,
38 shall report to the Legislature on the extent to which the registry
39 has helped women and minorities progress toward achieving parity
40 in corporate board appointments or elections.

1 (t) (1) The Secretary of State shall notify each University of
2 California campus and each California State University campus
3 of the opportunity to maintain the registry created pursuant to this
4 section. If more than one campus of the university or state
5 university expresses interest in maintaining the registry, the
6 Secretary of State shall select a campus based on a competitive
7 selection process. If a campus is selected, the Secretary of State
8 shall transfer the information contained in the registry, free of cost,
9 to that campus. Any University of California or California State
10 University campus selected to maintain the registry shall do so in
11 a manner consistent with this section. Funds deposited in the
12 Secretary of State's Business Fees Fund pursuant to this section
13 shall be transferred to the university selected to maintain the
14 registry, and shall be used to administer the registry program. The
15 Secretary of State shall maintain the registry until a University of
16 California or California State University campus agrees to do so.

17 ~~(u) On or before June 1, 2010, the Secretary of State shall~~
18 ~~request recommendations from local and state public pension funds~~
19 ~~on how to improve the effectiveness of the registry in increasing~~
20 ~~women and minority membership on corporate boards of directors.~~

21 (2) *The Legislature recognizes that in January 1999, the*
22 *Secretary of State transferred the authority and duty to maintain*
23 *the registry, and all materials associated with the registry, to*
24 *California State University, Fullerton.*